"ANALYSIS ON PROTECTION OF GEOGRAPHICAL INDICATION WITH SPECIAL REFERENCE TO NORTHERN STATES"

A

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ANALYSIS ON PROTECTION OF GEOGRAPHICAL INDICATION WITH SPECIAL REFERENCE TO NORTHERN STATES

1.1 INTRODUCTION

In the context with the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), the protection of geographical indications (GI) has been one of the most controversial IPR problems over time. GI is defined by the TRIPS system as any indicator that a product originates from a specific location, when a product's quality, reputation, or other attributes are mostly due to its geographic origin. Additionally, a geographical indication (GI) grants a town, province, or nation the sole right to use a name for a product that reflects the unique qualities of that area. In India, GIs are protected by the Geographical Indications of Goods (Registration and Protection) Act, 1999. In India, GI registration is not required. Additional legal protection to support a complaint of infringement will be provided if it is registered.

1.2 NEED FOR LEGAL PROTECTION OF GI

Given its vast commercial potential, GI legal protection is extremely important. Without adequate legal safeguards, rivals with no rightful claim to the GI could profit freely from its good name. The legitimate owners of the GI lose money as a result of these unscrupulous business tactics, which also deceive customers. Furthermore, such actions could gradually damage the GI's name and goodwill.

1.3 INTERNATIONAL PROTECTION FOR GI UNDER TRIPS

At the global level, TRIPS lays out basic protection requirements that WTO members must meet under their national protection laws. However, there is a hierarchy issue with regard to the extent of GI protection under TRIPS. This is due to the fact that TRIPS requires two

distinct levels of defense: (i) fundamental safeguards relevant across all GI in overall, under Article 22, and (ii) further safeguards suitable to just those underlying spirits and wines, under Article 23. This is the case even though all GI has the same definition, regardless of the product categories.

This presents a problem if Article 22 fails to sufficiently protect intellectual property for the benefit of a GI's actual right holders. In order to capitalize on the goodwill and reputation, a producer who does not dwell in the geographic area designated by the GI can employ the geographical designation as long as the product's genuine origin is disclosed on the label.

1.4 CHRONICLE OF TRIPS PROVISIONS ON GI

At a turning point in India's development policy-making process, the Uruguay Round of negotiations of the GATT negotiations began in 1986. The Uruguay Round proceedings were well underway by the moment India introduced its comprehensive package of economic reforms in 1991, which signaled an abrupt change in its policies and paved the way for the 1994 Marrakesh conference and the creation of the World Trade Organization. India's lengthy history of inward-looking economic strategy and a restrictive trade policy regime made it hesitant and, in a sense, a somewhat inactive player in the beginning stages of the Uruguayan Round negotiations.

But in Doha, India aimed to safeguard additional products under "geographical indication" (GI) in addition to wine and spirits. Many nations wanted to discuss expanding this additional degree protection to additional products because they disagree with other nations "usurping" their terms and believe that a greater degree of protection will help them market their goods more successfully by setting them apart from their rivals. Others have resisted the action, and the Doha Declaration's mandate for negotiations has been a topic of discussion.[1]

The argument put out by those opposed to extension is that the protection provided by Article 22 is sufficient. Critics warn that offering additional safeguards would be costly and interfere with currently accepted, legal advertising techniques. India and several other like-minded nations pushed for a "extension" of Article 23's scope to include every category of product.

[1] GI in the WTO & Doha Negotiations by Miguel Rodriguez Mendoza presented in Worldwide Symposium on GI. www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_bei_07/wipo_geo_bei_07_www_81777.doc

But 'extension' is strictly prohibited in the USA, New Zealand, Canada, Australia, Argentina, Chile, Guatemala, which is and Uruguayan. In 2001 the 'extension' issue was included in the Doha Work Programme. However, little has been accomplished in the negotiations due to the wide differences of opinion among WTO members, and it is still considered an "exceptional implementing concern."

1.5 THE INDIAN GI ACT

With the passage of a law specifically addressing GI protection, India established a sui generis system to provide protection for GIs..The legislations which deal with protection of GI's in India are 'The Geographical Indications of Goods (Registration & Protection) Act, 1999' (GI Act), and the 'Geographical Indications of Goods (Registration and Protection) Rules, 2002 (GI Rules). India enacted its GI legislations to establish national intellectual property laws that met India's obligations under TRIPS. Within the scope of the GI Act which became effective, along with the GI Rules, effective from 15th September, 2003, the central government established the Geographical Indications Registry with all India jurisdictions, at Chennai, where right holders can register their GI.

Unlike TRIPS, in the GI Act, it does not confine itself to wines and spirits. Instead, it has been left to the discretion of the central government to decide which products should be accorded higher levels of protection. This approach has been deliberately adopted by the drafters of the Indian Act to ensure that stringent protection, as assured under the TRIPS Agreement, is available for GI of Indian origin. Other WTO members, however, are not obliged to provide Article 23-type protection to all Indian GI, thus leaving open spaces for misappropriation of such Indian GI in the international platform.

In relation to Section 1(3) (e) of the Indian GI Act, the GI is defined that for the purpose of this section, any name other than that of a country, region, or locality of that country "shall" also be considered to be a GI if it is in respect of a particular geographical area and used on or in relation to specified goods originating in that country, region, or locality, as the case may be. This provision provides protection to symbols other than geographical names, such as 'Basmati'.

A registered geographic sign prohibits in all ways the usage of a geographical insignia, which indicates within the designation or representation of the goods that those goods originate from a particular geographical area. Such examples are G.I. is Basmati rice and Darjeeling tea from India. The connection between the goods and place becomes so much recognized that any reference to the place reminds those specific goods being produced there and vice-versa. Some of the Examples of Indian geographical indications which are registered in India are:

● Basmati rice

● Darjeeling tea

● Banaras Brocades and Sarees

● Coorg orange

● Phulkari

● Kolhapuri chappals

● Kanjivaram sarees

● Agra Petha

GI In Northern States

Muga silk is a registered GI from the state of Assam. Historical evidence tells us that by the 7th century A.D, the silk industry in Assam had reached the pinnacles of perfection. Banabhatta, the author of Harshacharita informs us that king Bhaskara Varma of Kamarupa (ancient Assam) presented Harshavardhana silken towels as "silken and pure as the autumn moon's night.". Today, muga silk is the state's biggest export product after Assam tea. The Patent Information Centre of the Assam Science Technology and Environment Council (hereinafter referred as ASTEC) secured registration for muga in 2006, which is incidentally the first registered GI from the north-eastern region. While ASTEC is the registered proprietor of the muga GI, till date, there are no registered users. One to one interviews with weavers and silk traders in the town of Sualkuchi unveiled very low awareness about the GI protection of muga. Now, the prices of muga have been mounting over the past few years and that has absolutely nothing to do with GI registration. According to the various stakeholders

interviewed, the reason for the high prices of the muga yarn are diminishing area under muga cultivation owing to rubber cultivation, diseases at the cocoon stage, loss incurred due to the outdoor nature of muga rearing, and so on. However, higher prices have not been able to encourage the farmers to hold on to muga cultivation. Due to this, muga has almost become three times more expensive compared to other similar varieties of silk.

Protection of "Darjeeling" (Tea) as a GI: A Brief History and Current Status

Darjeeling tea is a high-quality tea manufactured in the hilly regions of the Darjeeling district of West Bengal—a state in the eastern region of India. The administrative district of Darjeeling lies between 261310 and 271130 north latitude and between 871590 and 881530 east longitude. Situated in the north of the state of West Bengal with an area of 1,200 square miles, Darjeeling district is shaped like an irregular triangle.

That time Darjeeling was a thinly populated hamlet. The first commercial tea gardens of Darjeeling planted out by the British commercial interests came into being in 1852. Subsequent growth of new tea plantations was quite fast since the experimental stage had gone quite successfully. By 1874, tea in Darjeeling was discovered to be a commercially viable operation and there were 113 gardens covering an area of about 6,000 ha. So, commercial tea cultivation continued in Darjeeling. By the late 1970s, most of the tea gardens of Darjeeling were purchased from the British by Indians, many of whom were already managing the estates themselves. Today, 86 gardens covering an area of about 19,000 ha are producing approximately 10 million kilograms of Darjeeling tea every year. Although India is the highest producer of tea in the world, the share of Darjeeling tea is a miniscule 1–1.5% of the total tea production of India. Practically 80% of Darjeeling tea production is exported at a premium price. Major destinations of Darjeeling tea include Germany, Japan, the United States, the United Kingdom, and other EU countries such as the Netherlands, France, etc.

Geographical Origin of Darjeeling Tea

The administrative district of Darjeeling has been divided into two tea-growing regions: Terai, which constitutes the plains of Darjeeling district, and Darjeeling, comprising the hills of this district. Thus, tea grown in the Terai region does not belong to the category of “Darjeeling tea”. In fact, the precise geographical region associated with the term “Darjeeling tea” has been clearly specified in the “definition” of “Darjeeling tea” as laid down by the Tea Board of India.

According to this definition, "Darjeeling Tea" means: tea that has been cultivated, grown, produced, manufactured and processed in tea gardens in the hilly areas of Sadar Sub-Division, only hilly areas of Kalimpong Sub-Division comprising of Samabeong Tea Estate, Ambiok Tea Estate, Mission Hill Tea Estate and Kumai Tea Estate and Kurseong Sub-Division excluding the areas in jurisdiction list 20, 21, 23, 24, 29, 31 and 33 comprising Subtiguri Sub-Division of New Chumta Tea Estate, Simulbari and Marion Bari Tea Estate of Kurseong Police Station in Kurseong Sub-Division of the District of Darjeeling in the State of West Bengal, India; tea that has been processed and manufactured in a factory located in the aforesaid area which, when brewed, has a distinctive, naturally occurring aroma and taste with light tea liqueur and the infused leaf of which has a distinctive fragrance.

1.6 WHAT ROLE DOES WIPO PLAY IN PROTECTING G.I?

The Uruguay Round of GATT negotiations began in 1986, at the same time as India's development policy-making process was in a watershed. As a paradigm shift in its policy by the time India launched its large-scale economic reform package in 1991, the Uruguay Round of negotiations were going well, paving the way for Marrakech in 1994 and World Trade. Organization(hereinafter referred as WTO) established. The NDA remained a cautious and somewhat dysfunctional player during the early years of the Uruguay Round of negotiations, given its longstanding legacy of growth strategy and inward protectionist trade policy.

1.6.1 Authorized users enjoy the right to sue for infringement.

- It provides legal protection to geographical signs in India.
- Prevents unauthorized use of registered geographical indications by others.
- It provides legal protection to Indian geographical signals which in turn promotes exports.
- It promotes the economic prosperity of producers of goods produced in a geographical area.
- A registered owner can also approach for legal protection in other WTO member countries.
- It provides legal protection to the respective goods in domestic as well as in international markets.
- What are the subject matters which are not registrable under geographical Indication?

For getting registration, the indications should fall within the purview of Section 2(1) of Geographical Indication Act, 1999. When this happens, it must also meet the provisions of Section 9, which prohibits the registration of a geographical indication.

1.6.2 Registration

While registration of GI is not mandatory in India, Section 20 (1) of the GI Act states that no person "shall" be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an "unregistered" GI. The registration of a GI gives its registered owner and its authorized users the right to obtain relief for infringement[2]. The GI Registry with all India jurisdictions is located in Chennai with the Controller-General of Patents, Designs and TradeMarks as the Registrar of GIs, as per Section 3(1) of the GI Act. Section 6(1) further stipulates maintenance of a GI Register[3] which is to be divided into two parts: Part A and Part B. The particulars relating to the registration of the GIs are incorporated in Part A, while the particulars relating to the registration of the authorized users are contained in Part B (Section 7 of the Act).

A GI may be registered in respect of any or all of the goods, composed in such class of goods as may be classified by the Registrar. The Registrar is required to classify the goods, as far as possible, in accordance with the International classification of goods for the purposes of registration of GI (Section 8 of the Act). A single application may be made for registration of a GI for different classes of goods and fee payable is to be in respect of each such class of goods[4].

1.6.3 Who can apply for geographical indication registration?

Any person, manufacturer, organization or authority established by or under the law may apply for the registration of Geographical Indication of their product.

1.6.4 Registration process of Geographical Indications

Step 1: Application filing

[2] The Geographical Indications of Goods (Registration and Protection) Act, 1999 – Section 21 (a)

[3] Section 6(1) states that: For the purposes of this Act, a record called the Register of geographical indications shall be kept at the Head office of the Geographical Indications Registry, wherein shall be entered all registered geographical indications with the names, addresses and descriptions of the proprietors, the names, addresses and descriptions of authorized users and such other matters relating to registered geographical indications as may be prescribed and such registers may be maintained wholly or partly on computer.

[4] The Geographical Indications of Goods (Registration and Protection) Act, 1999 – Section 11(3)

Please check if the Indication falls within the definition of Section 2(1)(e) of Gl Act.

The association of individuals or producers or any association or authority should represent the interest of the producers of the goods concerned and file an affidavit as to how the Applicant claims to represent their respective interests[5].

Applications must be made in triplicate.

The Application must be signed by the Applicant or his agent and must be accompanied by a description of the case.

- Describe the special features and how those standards are maintained.
- Three certified copies of GI-related field maps.
- Description of the inspection structure if there is an area for regulating the use of G.I.

Step 2 and 3: Preliminary Examination and Examination

The examiner will check the Application for any deficiencies.

The Applicant should take measures in this regard within one month of communication.

The content of the case description is evaluated by an advisory group of experts who will master the subject.

Furnished will ascertain the correctness of the description.

After that, an examination report will be issued.

Step 4: Show cause notice

If the Registrar has any objection to the Application, he shall file such objection.

Applicants must reply within two months or apply for a hearing.

Step 5: Publication in Geographical Indication Journal

Every Application, within three months of acceptance, will be published in the Geographical Indications Journal[6].

[5] Ibid

Step 6: Resist Registration

Any person opposing the G.I. an application, published in the journal, can file a notice of protest within three months (another month upon request which is to be filed before three months).

Step 7: Registration of Application

Where an application for G.I. has been accepted, the Registrar will register the Geographical Indication. If the date of filing the Application after being registered will be considered as the date of registration.

Step 8: Renewal of Application

A registered G.I. will be valid for 10 years and can be renewed on payment of a renewal fee.

Step 9: Additional Security for Notified Goods

An application can be made to the Registrar for respective goods which are notified by the Central Government for additional protection for the registration of geographical Indication in Form GI-9, there will be three copies of the case details and three copies of issued notification.

Step 10: Appeal

Any person who is aggrieved by an order or decision which may prefer an appeal to the Intellectual Property Appellate Board (IPAB) within three months[7].

1.6.5 Infringement of geographical Indication

A registered geographical indication is violated by a person who is not a registered proprietor or authorized user, uses such a sign on the goods or suggests that such goods originate in another geographic area, which confuses someone other than the actual place of goods public. A geographical indication of the trademark also infringes upon any use that constitutes an act of "unfair competition", detailed explanation of 1 and 2 of Section 2(b). This provision seeks to give effect to Article 22(2)(b) of the TRIPS Agreement, which requires members to

[6] Ibid
[7] Ibid

“provide legal means for interested parties to prevent any use of Article 10 of the Paris Convention (1967). A geographical indication is also violated by a person who is not a registered proprietor or authorized user, who uses another geographical indication for the goods, which is actually true as to region, or locality from where the goods originated and publicly misrepresentation that goods originate in a region, or a locality to which such registered geographical indicators belong.

1.6.6 Remedies for infringement of Geographical Indications

Remedies relating to infringement of geographical indications are similar to remedies related to trademark infringement. Similarly, under the (Indian) Geographical Indicators Goods (Registration and Protection) Act, 1999, falsification of a geographical indication. Remedies which are available for conservation of geographical indications may be broadly classified into two categories:

(i) Civil remedies

Injunction

Some types of injunction are temporary injunction & permanent injunction. An injunction is issued to prevent the violations of related items, documents or other evidence pertaining to the subject matter of the case. In view thereof, an injunction for the first part for restriction of the defendant from disposing of his products or dealing with his products which might considerably detain the plaintiffs to recuperate damages, costs or some other economic cures which might be finally granted to the plaintiff as harm compensation is conceded. The said remedy of Injunction is more efficacious and shall avoid greater injury to the plaintiff. Or alternative cures that might eventually be administered to the plaintiff.

Damages

To stop infringers from violating the law, compensatory damages or an account of profits are possible as remedies. Accounts of profits or damages (apart from nominal losses) might be excluded. When the defendant persuaded the judge that he had no knowledge of it and that there was no justifiable reason to The plaintiff's geographical indication was presumably

registered at the time of its use, and he ceased using it after learning about its existence and characteristics.[8].

Delivery of the infringing labels and indications containing products

It is in the discretion of the court to direct the infringer to produce infringing labels and indications for destruction. by considering relevant circumstances the court may or may not direct for such remedy. All the remedies aforementioned are also available for the action of passing off. The actions of Passing off are brought against the infringement of unregistered geographical indications.

(ii) Criminal Treatment.

Compared to civil remedies, criminal lawsuits are more effective since they can be resolved more rapidly. A delay of criminal proceedings involving the same issue is not justified by the pending civil suits. Given that criminal processes target the offender's honor and social standing directly In order to preserve their good name, he often steps forward and stands for a compromise outside of court. The Act's Chapter VIII addresses offenses and the consequences associated with them.

1.6.7 Rights of Action Against Passing-Off

According to the nation's GI Act, absolutely nothing in that law "shall" be interpreted to impact penalties or legitimate rights of action against any individual who passes off products as belonging to another person. The basic idea behind the passing-off principle is that no one has the authority to pass off their own goods as someone else's. Protecting merchants' or manufacturers' names, reputations, and goodwill against any unfair attempts to take advantage of them is the primary objective of a passing-off action.

1.7 STATUS OF GI REGISTRATIONS IN INDIA

The GI Registry now has about 65 GIs of Indian descent listed. These include GI such as Kashmir Pashmina is (shawls), Kondapalli (toys), Mysore (agarbattis), Chanderi (sarees), Ikat (textiles), Darjeeling (tea), and Pochampalli. GIs registered in 2007–08 include Assamese "Muga Silk," Bihar's "Madhubani paintings," Kerala's "Malabar pepper" and "Alleppey

[8] Ibid

Green Cardamom," Tamil Nadu's "Cora Cotton," Uttar Pradesh's "Allahabad Surkha," West Bengal's "Nakshi Kantha," and Karnataka and Kerala's "Monsooned Malabar Coffees." Numerous further Indian GIs are awaiting register within the GI Act.

1.7.1 Cases Related To GI

DARJEELING TEA

In the regulated manufacturing business, tea is the oldest industry in India and continues to be the single greatest employment in this field. The nation produces over 30% of the tea consumed worldwide. India additionally happens to be the biggest tea user in the world. However, other major tea-producing nations like China, Kenya, and Sri Lanka are fiercely competing with India's exports.

In the steep areas of the Darjeeling region of West Bengal, a state in eastern India, premium quality tea known as "Darjeeling tea" is grown. Darjeeling tea, which has been grown in India for over a century, has a reputation for quality and flavor that sets it apart from other teas. In general, processing and geographic origin are the two elements that have led to this extraordinary and unique flavor. The elevation of the tea estates is more than 2000 meters higher than sea level.

While India became a British colony in the 1840s, Darjeeling tea's history began. The Lepcha tribes lived in the forests of what is now known as Darjeeling before the British arrived. A young British man named Captain Lloyd came upon the idea of turning this area as an agricultural community or a sanitarium in 1828 while touring it against the background of the snow-capped Himalayan range. In 1839, Dr. A. Campbell's, a civil surgeon, was given Darjeeling. He relocated between Kathmandu to Darjeeling to serve as the district's first superintendent, a role he maintained for the following 22 years.[9] From 1841, Dr. Campbell planted the Chinese tea seedlings inside his beech wood gardens in Darjeeling, which is 2134 meters above mean sea level, close to his home. The seeds were obtained from the Kumaon highlands in North India. In 1847, the British government decided to establish tea nurseries in the area after observing the success of Dr. Campbell's experimental tea nursery. Many Darjeeling tea estates were still owned by the British even after India gained independence from British domination in 1947.

[9] Darjeeling Planters Association (1999), http://www.teaboard.gov.in

The majority of Darjeeling's tea gardens were owned by Indians at the conclusion of the 1970s. The majority of Darjeeling tea's yearly production is exported, with the United States, the United Kingdom, Japan, Russia, as well as European Union (EU) nations like France, Germany, and the Netherlands being the main consumers. In February 2000, the Indian Tea Act of 1953 was amended to include a mandatory mechanism of authenticating exported Darjeeling tea in order to guarantee the supply of authentic Darjeeling tea. By paying an annual license fee, the system requires all Darjeeling tea sellers to sign an agreement for licenses with the Tea Corporation of India.

Evolution of Legal Protection

Even back in 1983, when the "Darjeeling" emblem was designed, the Tea Board of India made its first attempt to protect the trademark. By the Indian Trade and Goods Marks Act 1958 (now the Trade Marks Act, 1999), the Tea Board was able to secure residential protection with regard to the Darjeeling logo as a certification trademark. In 1986, the Tea Board was given the right to register in class 30. The same year, the logo was registered as a trademark in a number of other countries [see Annexure A], including the United Kingdom, the United States, Canada, Japan, Egypt, and Germany as well as Austria, Spain, France, Portugal, Italy, Switzerland, and the former Yugoslavia under the Madrid Agreement.

The first attempt on the part of the Tea Board of India towards protection of the 'Darjeeling' brand was undertaken way back in 1983, when the 'Darjeeling' logo was created. The Tea Board obtained home protection for the Darjeeling logo as a certification trade mark under the Indian Trade and Merchandise Marks Act 1958 (now the Trade Marks Act, 1999). The registration was granted in class 30 in the name of the Tea Board in 1986. In the same year, the logo was registered as a trademark in several other countries like the UK, the USA, Canada, Japan, Egypt, and under the Madrid Agreement covering Germany, Austria, Spain, France, Portugal, Italy, Switzerland and former Yugoslavia[10].

Enforcement Steps Taken by The Tea Board of India

When its Darjeeling name or logo was brought to its attention, the tea board made an effort to stop its illicit utilization attempt, or real registration. Through discussions with the foreign corporations, the Indian Tea Board has resolved some concerns pertaining to Darjeeling tea.

[10] Darjeeling Tea- Intellectual Property Rights of Darjeeling Tea in the age of globalization and world trade http://www.american.edu/ted/darjeeling.htm#Links

For instance, following legal notification and discussions by the Tea Board, Bulgari, Switzerland, consented to remove the iconic "Darjeeling Tea fragrance for men." In the past four years, the Tea Board has battled against the infringement and misuse of the name Darjeeling Tea in nearly 15 cases across countries such as Russia, the United States, Japan, France, Germany, Israel, Norway, and the Republic of Sri Lanka.

Banganapalle Mango

Numerous sages, like Beneshan, Banahan, Benishan, Chapati, Safeda, Banganapalli, Banginapalli, Banganapalle, and others, also know about the fruit. The fruit's ability to keep its quality for three months in cold storage is its primary selling point. "The notable distinctive characteristic of Banganapel mangoes is that these fruits possess light markings in their outer layer. The stones are diagonal in shape, and have very thin seedlings, which have sparse and soft fibers," according to documents filed with the Registry.

The original center of Kurnool district, which covers Khammam, Mahbubnagar, Rangareddy, Medak, and Adilabad districts as well as Nandyal Mandal in Banganapalle, Penam, and Telangana, was also referred to by the administration. Regarding 7,68,250 families were engaged in the growing of Banganapalle mangoes, in accordance to an affidavit provided in 2011 by Rani Kumudini, the Andhra Pradesh Commissioner at the time. Approximately 5,500 tonnes of Banganpal mangoes are shipped each year to nations including the United States, United Kingdom, Japan, and the Gulf countries, while approximately 24.35 lakhs tonnes of mangoes are farmed in Andhra Pradesh.

Bengali Rasgulla v. Odisha Rasgulla

G.I. was registered as Ras Bengali Rasgulla by the West Bengal State Food Processing and Horticulture Development Corporation Limited in November 2017. According to reports, Bengal emerged victorious in the long-running conflict between Bengal and Odisha over who would control the renowned dessert. It was claimed that this well-known dessert originated in the Jagannath temples in Puri, Odisha, and that the legal proceedings for G.I. registration began after objections to G.I. certification were filed. In February 2018, a request to cancel the G.I. status registration was submitted. Following notification from the G.I. Registry in July that Odisha had registered G.I. under the name "Odisha Rasgulla," a number of reports were made public. Odisha won the race despite not giving up. It is crucial to remember that the G.I.

Two prefixed terms, "Banglar" and "Odisha," are specifically for the G.I. tag. stating that "rasgulla" or "rasgola" is a broad phrase that anyone can use in their line of work. Therefore, in terms of the law, no state has exclusive use of the term "Rasogola" or "Rasola." As a result, selling candy to any individual in the trade under the names Rasgulla, Rasgola, or an alternative synonym is acceptable. It is illegal for anybody besides authorized users to use the terms "Odisha rasgulla" and "Bengali rasgulla."

1.8 STATEMENT OF PROBLEM

The commencement of the Act in 2003 was a huge step in recognizing the 'traditional knowledge' belonging to various diversified cultures and lay out a procedure for the registration of the Geographical Indication belonging to different states. The implementation of the provisions of the Act, however, was a totally different story altogether as with a new law, comes the need to spread awareness about the same.

1.9 RESEARCH GAP

The main social issue in India is people's ignorance of the GI Laws. Even with the GI Act being passed by the Indian legislature in 1999, many common artisans and rural producers are unaware that their produce or skilled items are worthy of protection. They don't know how to apply for and obtain GI protection. They even know less in the event that their GI is being abused and deceived by someone else. They are unaware of the various remedies to stop this kind of usage. Additional analysis has revealed that the registration status varies greatly. Any group of people or organization formed by law that represents the interests of the producers may apply for the registration of a GI mark in India under Section 11[9] of the GI Act. In addition, any manufacturer of a commodity for which a GI mark has been issued may apply to be registered as an authorized user of that mark under Section 17[10] of the GI Act. It's interesting to note that the Act restricts the use of GI marks to licensed users exclusively.

This generally suggests that the Act's structure is that, although an organization is able to obtain a GI mark, only authorized users are permitted to use such a mark. This indicates that

the Act's goal is to strengthen the authorized user's position in situations where a group of users' band together to create an association that can acquire the GI designation. But the actual situation on the ground is far from accomplishing this goal. Regarding the Act's design, Basole stated that the Indian GI regime totally eliminates the traditional craftsman's or artisan's role, whose interests are meant to be safeguarded by GI. This is due to the fact that an Indian craftsman lacks the resources—cash, time, or even knowledge—necessary to submit an application for registration or status as a "authorized user." As a result, in practice, businesses who hire these artisans really profit commercially from the registered GI mark, but the genuine artisans who have amassed this kind of knowledge are not granted access to such benefits. Moreover, academicians have contended that neither the GI Act nor the GI Rules contain any particular clauses that establish whether the purported proprietor or producer genuinely represents the interests of the producers or whether the purported producer is a producer of the item at all. In this regard, it is important to note that the GI Act gives a producer the ability to contest the applicant's application on the grounds that the applicant does not adequately represent the producer's interests. When a producer makes such an opposition, the authorities under the Act, after carefully examining the evidence and the surrounding circumstances, have refused to register the GI mark if the applicant association does not represent the producers' interest or if making money is their main objective. In addition to the time required to make these decisions, manufacturers could occasionally not be able to challenge each and every illegal registration. Additionally, it may become more difficult for legitimate users to register if illegal registrations are not prevented. It would be beneficial to increase the initial difficulty of proving that the applicant organization is acting in the producers' best interests in order to decrease illegitimate registrations.

Users who were authorized also had to contend with the need that the registered proprietor submit a "no-objection certificate" and an authorization application together. However, this issue has been substantially resolved by the newly adopted GI Amendment Rules, 2020. Under the revised rules, the request for an authorized user can now be made without a "no-objection certificate" from the proprietor; all that is required is to put a duplicate of the request on the registered proprietor. The registration fee has also been essentially eliminated. The statute has therefore allowed authorized users to register for a period of time.

1.10 OBJECTIVES OF THE RESEARCH

1. To describe the meaning of "Traditional Knowledge" and how it demarcates the line between Trademark and Geographical Indication.
2. To find out the earlier procedure that was followed for recognition of Geographical Indication in India prior to 1999 legislation.
3. To find out the procedure for registration of a GI and compare the same from the earlier procedure.
4. To find out means and measures required to spread the knowledge of availability of GI law in Indian Northern states among rural classes and suggest the additional measures which can be taken to enhance the already existing legislation.

1.11 RESEARCH QUESTIONS

Question 1

Is the existing framework of GI protection in India adequate?

Question 2

Is the Indian Legislative framework on GI protection TRIPS compliant?

Question 3

What are the socio-economic and political needs of protection of GIs?

Question 4

What is the current standard maintained by the Traditional Knowledge?

1.12 SURVEY OF LITERATURE

BOOKS

Michael Blakeney's book The Protection of Geographical Indications: Law and Practice This new edition of The Protection of Geographical Indications examines the European rules

that govern the use of geographical indications in the marketing of food, wine, spirits, and agricultural products, summarizing the most recent legal developments**.**

Irene Calboli and Wee Loon Ng-Loy's Geographical Indications at the Intersection of Trade, Development, and Culture: The protection of geographical indications (GIs) has historically been one of the most contentious issues in international intellectual property. The 1994 ratification of TRIPS did not end disputes, and nations all over the world still dispute the definition, extent, and application of GI protection on a national and international level. However, there is currently a dearth of literature discussing GI protection from an Asia-Pacific perspective, despite the fact that nations in this region have proactively debated the issue and, on multiple occasions, have pushed GIs as a way to support local development and preserve local culture.

Research Handbook on Intellectual Property and Geographical Indications by Dev S. Gangjee - Place and origin are more important than ever in a world that is becoming more interconnected by the day. The labels that indicate this provenance are governed by the law pertaining to Geographical Indications (GIs). Although the names Champagne, Prosciutto di Parma, Café de Colombia, and Darjeeling are well-known, the corresponding legal frameworks have been marginalized for more than a century. This book celebrates the emergence of a critical mass of scholarship in recent years. Its goal is to support an interdisciplinary dialogue by offering steady direction through disputed territory and allowing for the emergence of new lines of inquiry.

The Protection of Geographical Indications in India: A New Perspective on the French and European Experience by Delphine Marie Vivien – The How and Why of preserving the distinctive character of regional goods in the era of globalization are covered in detail in this book.

Geographical Indications by WIPO - An overview of geographical indications is given in this publication, together with information on their fundamental characteristics, applications, and intellectual property rights protection. It serves as an introduction for readers who want to discover more about the subject and is written for non-experts.

1.13 HYPOTHESIS

The hypothesis formulated by the researcher is –

a. GI protection has the potential to increase Marketing Avenue and bring about economic value to protected products in relation to TRIPS agreement in itself which lacks some major essentials that need to be corrected.

b. Lack of awareness and widespread piracy of goods is prevalent in India.

1.14 RESEARCH METHODOLOGY

For this research, researcher will be following the Doctrinal Method and empirical wherever necessary. Also for the completion and fulfillment of the objectives of this research study data will be collected from various books, case laws, Journals, articles, etc. By reviewing research articles of others, researcher wanted to critically examine their views and perspective of considering this issue.

Sources of Data

In order to critically examine the legislative framework and the opinions of the other authors, the scholar will be depending on secondary source information used for this study. The following secondary sources were used in the study: books, articles, and online portals. (Online databases such as Manupatra, SCC Online, Kluwer Competition shall be used.)

1.15 TENTATIVE CHAPTERIZATION

CHAPTER 1:

INTRODUCTION: This chapter introduces the concept of Geographical Indication. It also provides for the existing scenario in India regarding the implementation of the Geographical Indications of Goods (Registration and Protection) Act, 1999 and it's alignment with TRIPS agreement.

CHAPTER 2:

GI FROM THE RETROSPECTIVE AND PROSPECTIVE PERSPECTIVE: The aim of this chapter is to study and understand what does the GIs essentially means. In order to do this, it is imperative to see GIs in the context of the family of IP laws and understand the same from a historical perspective. The chapter will consider GIs in light of the various

international agreements to provide the retrospective outlook and thereafter consider the current issues being faced by looking into aspects of the Doha Development Agreement.

CHAPTER 3:

INTERNATIONAL REGIME RELATED TO GI: The purpose of this chapter is to study the established international rules and standards under WTO's TRIPS Agreement, which mandates GI protection and treaties like the Lisbon Agreement promoting global recognition and ensuring enforcement, and fair trade practices for Geographical Indications (GI) products.

CHAPTER 4:

A COMPARATIVE ANALYSIS OF INDIAN AND INTERNATIONAL LEGAL FRAMEWORKS

This chapter proposes to explore the legal and economic dimensions of geographical indications, emphasizing the necessity and significance of their protection. The contrasting views of the US and EU will also be detailed which will enable a clear understanding of the legal issues that arise vis-à-vis GI. Thereafter the Indian perspective of GIs will be considered in light of the Indian law on GI protection.

CHAPTER 5:

PROBLEMS FACED BY NORTHERN STATES OF INDIA: This chapter lays down the unspoken truth about the Northern states of India over the policy making process on International Standards of GI.

CHAPTER 6:

CONCLUSION AND SUGGESTIONS: In the first part of this chapter the researcher provides for the suitable changes that are required in the current legislation and in the later part the researcher concludes this research proposition by providing inputs required to improve the registration procedure in India.

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